



The City of Red Deer

Electric Distribution System Service Area Enlargement

May 15, 2009



ALBERTA UTILITIES COMMISSION

Decision 2009-062: The City of Red Deer
Electric Distribution System Service Area Enlargement
Application No. 1550523
Proceeding ID. 55

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**THE CITY OF RED DEER
ELECTRIC DISTRIBUTION SYSTEM
SERVICE AREA ENLARGEMENT**

**Decision 2009-062
Application No. 1550523
Proceeding ID. 55**

1 INTRODUCTION & BACKGROUND

1. The City of Red Deer (RD) applied to enlarge its electric distribution system service area to include land recently annexed from Red Deer County.
2. By Order in Council O.C. 529/2007, the provincial Cabinet approved the annexation of approximately eight quarter sections of land (Annexed Lands) to RD from Red Deer County (Annexation), effective January 1, 2007.
3. RD operates its own electric distribution system within its corporate boundaries. The present service area of the electric distribution system of RD was established by the Alberta Energy and Utilities Board (EUB) in Approval No. U2005-450 on December 14, 2005.
4. As a result of the Annexation, the new corporate boundary of the city extends approximately eight quarter sections beyond the present service area of the electric distribution system of RD. Customers within the Annexed Lands (Annexed Customers) are currently served by electric distribution facilities owned and operated by FortisAlberta Inc. (FAI).

2 NATURE OF THE APPLICATION

5. RD filed Application No. 1550523 with the EUB on December 11, 2007 (Application). RD applied under section 29 of the *Hydro Electric and Energy Act* (HEEA) for approval to enlarge its electric distribution system service area to include the Annexed Lands, in line with the its land development plan and schedule. On January 1, 2008, the Alberta Utilities Commission (AUC or Commission) was established. In accordance with the transitional provisions of the *Alberta Utilities Commission Act*, the Commission has considered the Application.
6. There are eight quarter sections of land that would be affected by the requested service area enlargement. A map showing RD's existing service area and the proposed service area enlargement is attached as [Appendix 3](#).
7. The Annexed Lands are as follows:
 - The north half of Section 25, Township 38, Range 28 West of the 4th Meridian, and includes government road allowances lying to the west of the half section and that portion of the Queen Elizabeth II highway lying to the east of the half section;
 - The east half of Section 35, Township 38, Range 28 West of the 4th Meridian, but excludes road plan 3274JY;

- Section 36, Township 38, Range 28 West of the 4th Meridian, and includes that portion of the Queen Elizabeth II highway lying to the east of the southeast quarter of section 36 and including government road allowances lying to the west of section 36 but excludes road plan 3274 JY lying to the north of Section 36 and excluding road plan 2082 LZ lying to the northeast; and
- All intervening road allowance, registered road and highway plan rights-of-way.

2.1 Notice of Application

8. On September 15, 2008, a Notice of Application (Notice) was issued by the Commission and mailed to 22 parties identified by RD as land owners and business owners located in the Queen's Business Park within the Annexed Lands. The Notice was also published in the Calgary Herald and Calgary Sun newspapers on September 18, 2008.

9. A deadline of October 10, 2008, was indicated in the Notice as the date by which parties were to notify the Commission of their intent to intervene. The Commission received Statements of Intention to Participate (SIPs) from three parties: FAI, ATCO Electric Ltd., and ENMAX Power Corp. FAI was the only party who opposed the Application and indicated its intention to actively be involved in the proceeding. The Commission combined the Application and SIPs from parties into Proceeding 55.

2.2 Notice of Application and Proceeding

10. To ensure that all Annexed Customers received notification of the Application, the Commission issued an Order to Disclose (Order) to FAI on October 28, 2008, to direct FAI to release the names and addresses of the Annexed Customers to the Commission. FAI complied with the Order and provided the Commission with the requested information on November 25, 2008.

11. A Notice of Application & Proceeding (Proceeding Notice), issued by the Commission on November 27, 2008, was sent to the Annexed Customers identified by FAI in response to the Order. The Proceeding Notice was also published in Red Deer area newspapers.

12. A deadline of December 22, 2008 was indicated in the Proceeding Notice as the date by which parties were to notify the Commission of their intent to participate in the proceeding. The Commission received a SIP from one additional party, Mr. David Richter.

2.3 Written Process

13. The Commission established the following schedule to consider the Application:

<i>Process Step</i>	<i>Deadline Date</i>
Information Requests to Applicant	January 12, 2009
Information Responses from Applicant	January 23, 2009
Intervener Submissions/Evidence	January 30, 2009
Information Requests to Interveners	February 6, 2009
Information Responses from Interveners	February 13, 2009
Rebuttal Submissions/Evidence	February 20, 2009
Written Argument	March 6, 2009
Written Reply Argument	March 20, 2009

2.3.1 Commission Amendment to Proceeding Schedule

14. On January 28, 2009, due to potential disruptions to the Commission's Electronic Proceeding System tool, the proceeding schedule was amended as follows:

Process Step	New Deadline Date
Information Requests to Interveners	February 9, 2009
Information Responses from Interveners	February 17, 2009
Rebuttal Submissions/Evidence	February 23, 2009
Written Argument	March 9, 2009
Written Reply Argument	March 20, 2009

15. The record for Proceeding 55 closed on March 20, 2009.

16. In reaching the determinations contained within this Decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the evidence and argument provided by each party. Accordingly, references in this Decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

3 LEGISLATIVE FRAMEWORK

17. As noted above, by Order in Council O.C. 529/2007, RD was granted the lands described in the annexation approval, submitted as an attachment to the Application, pursuant to sections 125 and 138 of the *Municipal Government Act* (MGA).

18. RD, as a municipality that provides municipal utility service, has exclusive jurisdiction to provide utility service within its municipal boundaries pursuant to section 33 of the MGA.

19. As the Annexed Lands are currently within the service territory of FAI, the Commission has considered the Application in accordance with section 29 of the *Hydro and Electric Energy Act* (HEEA) which states, *inter alia*:

29(1) The Commission, on the application of an interested person or on its own motion,

- (a) **when in its opinion it is in the public interest to do so**, and
- (b) on any notice and proceedings that the Commission considers suitable,

may alter the boundaries of the service area of an electric distribution system, or may order that the electric distribution system shall cease to operate in a service area or part of it at a time fixed in the order.

[...]

(3) When a local authority that owns and operates an electric distribution system applies for an enlargement of its service area to include additional land in its municipality, the Commission shall

[...]

(b) **in respect of land included in the service area of another electric distribution system, grant the application unless after a public hearing the Commission finds compelling reasons in the public interest not to do so,** in which case the Commission with the approval of the Lieutenant Governor in Council may deny the application in whole or in part,

and when the Commission grants an application to which clause (b) applies, it shall stipulate any terms and conditions it considers reasonable including a stipulation of the date on which the alteration of the service areas comes into force.

[...]

(5) When the Commission makes an order to which subsection (4) applies, it may defer the addition to the order of the provisions referred to in subsection (4) in a suitable case to give the parties the opportunity of making an agreement as to compensation to be paid.

(6) The amount of compensation payable by any person under an order under this section is a debt and is recoverable by the person entitled to receive the compensation under the order by action. (emphasis added)

20. Subsection 29(3) of the HEEA requires the Commission to approve the Application unless the Commission can find compelling reasons not to do so. This language suggests that there must be a real impediment to the public interest in order to satisfy this requirement. This interpretation is further supported by the fact that the legislation does not grant to the Commission sole discretion to make such an order but, also requires the Commission to seek the approval of the Lieutenant Governor in Council. As an Order in Council is required to annex the lands to RD, it would be necessary for the Commission to demonstrate why a further Order in Council, exempting these lands from service by the municipal-designated utility, would be appropriate.

21. The Commission will consider whether the Application is in the public interest by having regard to its social and economic effects. In the Commission's view, assessment of the public interest requires it to have regard to the rights afforded the municipality as well as consideration of any negative consequences associated with the enlargement of a municipally-owned electric system. The Commission adopts the approach of its predecessor, the EUB, that the public interest standard will generally be met by an activity that benefits the segment of the public to which the legislation is aimed, while at the same time minimizing, or mitigating to an acceptable degree, the potential adverse impacts on more discrete parts of the community.¹

4 ISSUES

22. RD submitted that it intends to serve any new loads in the Annexed Lands area from its own electric distribution system.

23. RD further submitted that compensation payments to FAI to effect the transfer of assets and customers, pursuant to subsection 29(4) of the HEEA, will occur in the future when the land development progresses.² In response to an information request from FAI, RD stated that

¹ EUB Decision 2001-22: *EPCOR Power Development Corporation and EPCOR Generation Inc., Rossdale Power Plant Unit 11* (RD 11), page 6

² Application, page 1

historically RD and FAI were able to quickly and efficiently arrive at mutually agreeable compensation terms.³

24. FAI has raised the following issues to demonstrate why a compelling case can be made to deny this request:

- Customer service would be impacted by the switch in distribution provider;
- Reconfiguration of FAI's facilities to effect separation will add unnecessary costs to its system which will have to be borne by all of FAI's customers;
- RD would also have to incur additional costs to reconfigure its system; and
- A material duplication of facilities would result.

5 DISCUSSION OF ISSUES

5.1 Customer Service

25. FAI indicated that there are 49 existing customers located within the Annexed Lands.⁴

26. FAI submitted that when customers are forcibly switched from a non-municipally-owned service provider to provision of service by a municipally-owned utility, a number of changes and disruptions occur.⁵ These include:

- The customer will receive communications/notifications that their distribution company is or may be changing;
- Outages will be experienced by customers as their service is physically transferred between systems and/or as meters are exchanged;
- The load settlement site ID will change and customers information/history must be transferred;
- Rates, terms and conditions, per the respective distribution company's tariffs, will change and any existing or future contractual obligations (if applicable) must be addressed;
- Regulated Rate Option provider and tariff (if applicable) will change.

27. RD disagreed that these changes represent disruptions to individual customers, but acknowledged that each of the listed items will take place as part of the transfer of customers from one service area to another.⁶

³ FAI-RD-005 (d)

⁴ AUC-FAI-001

⁵ FAI Argument, page 1

⁶ FAI-RD-002 (a)

28. RD asserted that as part of regular distribution operations, a utility company must already have in place the processes for communication to end-use customers who may be affected by events such as system upgrades and potential or actual outages.⁷ RD stated that previous service boundary expansions were managed by RD without any customer complaints.⁸

29. RD submitted that site ID changes will not impact customers as this occurs virtually every day without disruption to the end-use customer.⁹

30. RD asserted that a comparison of publicly available distribution tariffs would confirm that RD electric rates are very competitive with FAI.¹⁰

5.1.1 Commission Findings

31. The Commission has considered the following factors in its determination of the impact of the Application on customer service:

- RD's three service area enlargements over the past 10 years involved a total of 37 sites¹¹ and resulted in no customer service complaints.¹² The estimated 49 customers¹³ impacted by the Application is not a significant increase in the number of customers from the previous enlargements. As these enlargements were also in FAI's service territory, it is reasonable to conclude that there would be a similar ease of transition for this enlargement;
- The Annexed Customers' rates and terms and conditions of distribution service are regulated by the City Council of RD. In the event that an issue may arise respecting the rates or terms and conditions, the Annexed Customers will have recourse to the City Council;
- Load settlement IDs and customer information/histories can be transferred without disruption to customers;
- RD has committed to ensuring an orderly, economic and efficient transition in cooperation with FAI.¹⁴

32. Given the foregoing, the Commission finds that FAI's concerns with respect to customer service do not provide compelling reasons to demonstrate that the Application is contrary to the public interest.

5.2 Costs

33. FAI submitted that the transfer of assets from FAI to RD would cause additional costs to be incurred to reconfigure both utility networks. FAI has estimated, based on the assumption that the transfer of assets is immediate, that the total system reconfiguration costs would be

⁷ FAI-RD-002 (a)

⁸ RD Argument, page 6

⁹ FAI-RD-002 (a)

¹⁰ RD Argument, page 2

¹¹ FAI-RD-003(d)

¹² RD Argument, page 6

¹³ AUC-FAI-001

¹⁴ RD Argument, page 5

\$570,000. In addition, customers would have to cover the costs of facilities transferred to RD on the prescribed basis of Replacement-Cost-New-less-Depreciation (RCN-D) which FAI estimates to exceed \$1,600,000. Therefore, depending on the timing of the transfers, the cost to customers is estimated to be approximately \$2.2 million.¹⁵

34. FAI submitted that the perpetual reconfiguration of distribution systems to accommodate the continual enlargement of municipally-owned electric systems as a result of municipal annexations is not an orderly, economic or efficient way to develop distribution networks in Alberta and is not in the public interest.¹⁶ In its SIP, FAI also asserted that if the Application were to be approved, a material duplication of facilities would result, however, this issue was not pursued further by FAI in its evidence or argument submission.¹⁷

35. FAI also stated that the proposed addition to RD's service area lies to the West of the Queen Elizabeth II highway. Significant costs not estimated or considered by Red Deer would be required to effect any safe and secure crossing of that major highway by distribution and potential, transmission facilities.¹⁸

36. RD submitted that the cost to purchase the assets from FAI (estimated at \$1.6 million) was simply a transfer between utilities of a cost that already exists.¹⁹ RD submitted that only a portion of this cost that was in excess of FAI's book value would be relevant and that FAI had not provided its book value.²⁰ RD submitted that such cost was contemplated by subsection 29(3)(b) of the HEEA, and, as such, these costs are not a compelling reason to reject the Application.

37. In Information Response FAI-RD-003 (b) and (c), RD indicated that it did not have the information to determine the costs to transfer customers because it did not have information regarding the existing customers and FAI facilities.

38. In addition, RD stated that FAI's cost estimate of \$570,000 to reconfigure FAI's system was not supported by any evidence. RD submitted that, regardless, this issue would have been considered in virtually every other service boundary change application which has routinely been approved in the past.²¹

39. With respect to the crossing of the Queen Elizabeth II Highway, RD stated that it was incorrect for FAI to portray the crossing of the highway as prohibitive or extravagant, particularly without providing its own cost estimates.²²

40. RD submitted that the potential costs outlined by FAI do not provide compelling reasons to refuse the Application.²³

¹⁵ FAI Argument, page 2

¹⁶ FAI Argument, page 3

¹⁷ FAI Statement of Intent to Participate, page 1

¹⁸ FAI Argument, page 3

¹⁹ RD Argument, page 3

²⁰ RD Argument, page 4

²¹ RD Argument, page 4

²² Argument, page 5

²³ RD Argument, page 6

5.2.1 Commission Findings

41. FAI has provided the Commission with an estimate of \$570,000 to reconfigure its assets, if all the customers were transferred immediately. The Commission notes that RD could have requested additional back-up for this figure but chose not to submit any Information Requests. In these circumstances the Commission accepts FAI's estimate.

42. The Commission considers that the incremental costs do not include the costs transferred between utilities, which is the portion of the RCN-D that is represented by the book value of the transferred assets. The incremental costs consist of any RCN-D transfer costs in excess of book value, the costs to reconfigure the system, and any incremental costs that will be faced by servicing new customers from RD's facilities rather than FAI's.

43. The Commission notes that the costs to transfer the customers, including RD's costs, are unknown at this time and are not planned to be incurred immediately.²⁴ Further, there is no evidence regarding the amount, if any, of future incremental costs for RD to serve new customers rather than FAI.

44. The Commission finds there is also not sufficient evidence to determine the extent of capital spending that is expected in the future in order to serve the new customers that are expected to locate in the Annexed Lands over time. If this estimate were available, along with an estimate of the incremental costs, then it would be possible to put the incremental costs into context. The Commission has no evidence to demonstrate whether the total of RD's and FAI's costs to reconfigure assets is excessive in comparison to the total development costs expected on the Annexed Lands.

45. Based on the above, the Commission finds there is not sufficient evidence to estimate the total incremental cost to the public. As noted above, RD had indicated it was unable to provide the costs at this time.

46. The Commission considers that the removal of 49 customers, in the absence of evidence to the contrary, does not appear to impose a burden on the remaining FAI customers in Alberta.

47. The Commission also considers that the onus was on FAI to provide evidence to convince the Commission that the costs associated with the Annexation were contrary to the public interest. The Commission finds that FAI has failed to provide compelling evidence as to deem the Application contrary to the public interest.

5.3 Harmonization of Boundaries

48. RD submitted that the intention of extending its electric distribution system to include the Annexed Lands is to be in line with RD's land development plan and schedule. RD intends to serve any new load in the areas from its own distribution system.

49. FAI stated that the perpetual reconfiguration of distribution systems to accommodate the continual enlargement of municipally-owned electric systems as a result of municipal annexations is not in the public interest.²⁵

²⁴ RD Argument, page 1

²⁵ FAI Argument, page 3

50. RD submitted that the Government of Alberta has already determined it to be generally in the public interest for the service boundary of a municipal electric distribution utility to be harmonized with the municipal boundaries.²⁶

5.3.1 Commission Findings

51. Under the MGA, RD has a legal right to provide distribution service within RD's corporate boundaries. RD has chosen to assert this right.

52. The legislative scheme under subsection 29(3) of HEEA clearly contemplated the possibility that a municipal utility could expand into the service territory of an existing utility. The mere assertion that it is not in public interest to allow the boundaries to change is insufficient to overturn this presumption.

53. The Commission finds that consideration of the public interest strongly favours giving effect to the relevant legislation and the legislative scheme that suggests municipal service territories correspond to the boundaries of the municipalities. Specifically, it would be contrary to the public interest to deny RD any rights that were granted under section 45 of the MGA. The public interest reasons presented by FAI are not of a substantial magnitude to outweigh the public interest factors favouring the Application.

5.4 Objection of Mr. David Richter

54. The Commission received an objection from Mr. David Richter of 850184 Alberta Ltd. on December 22, 2008. 850184 Alberta Ltd. is receiving electricity service as a customer of FAI within the Annexed Lands area.

55. Mr. Richter objected on the grounds that approval of the Application might result in a rate increase for customers of FAI that would be transferred to RD. Mr. Richter's second concern was the loss of the deposit that 850184 Alberta Ltd. paid to FAI.²⁷

56. RD submitted that its electricity rates are very competitive with FAI. RD indicated that it intended to advocate for any unreturned customer deposits to be transferred to RD and, in cases where RD does not require a deposit, be returned to customers.²⁸

57. FAI did not address Mr. Richter's objections.

5.4.1 Commission Findings

58. The Commission notes RD's assertion that the electricity rates charged by RD are competitive with FAI rates. Further, Mr. Richter has provided no evidence to demonstrate that these rates are not competitive, but has only asserted a fear that this would not be the case.

59. The Commission notes that no details regarding the terms and conditions of the deposit were submitted, thus the Commission finds that there is not sufficient evidence to make a determination on outstanding deposit returns.

²⁶ FAI-RD-001

²⁷ Exhibit 0019.01.RICHTER-55

²⁸ RD Argument, page 2

60. The Commission is not persuaded by the evidence presented that the issue of rate differentials and return of deposits are so substantial so as to find the Application contrary to the public interest.

5.5 Deferral of Service and Compensation

61. In its application, RD indicated that FAI would continue to serve the Annexed Customers until RD gives notice to FAI to affect the transfer of assets and customers.²⁹ RD further submitted that it had no intention of transferring these customers until land development progressed to the point where the transfer could be done in the most orderly, economic and efficient manner possible.³⁰

62. RD also proposed to defer the payment of compensation pursuant to subsection 29(4) of the HEEA until the effective date of the asset transfer.

63. In its submission, FAI did not address RD's proposal to defer service or compensation.

5.5.1 Commission Findings

64. The Commission notes that if RD's Application is approved, the Commission will no longer have jurisdiction over the service territory.

65. As RD has advised that it does not intend to serve the Annexed Customers until some time in the future and as it also wishes, in the event the Application is granted, to defer the determination of compensation that must be paid by RD to FAI, it is necessary for the Commission to impose terms and conditions on its approval.

66. Based on all of the foregoing, the Commission approves the alteration of the service area as requested subject to the following conditions:

Alteration of the service area shall not come into force until such time as:

- RD is prepared to serve the Annexed Customers and
- RD and FAI have reached an agreement with respect to the payment of compensation pursuant to subsections 29(4) and (5) of the HEEA which has been approved by the Commission, or in the absence of an agreement for the payment of compensation being reached, at the request of either party, the Commission has made a determination of the compensation payable.

²⁹ RD Application, page 1

³⁰ RD Argument, page 1

6 DECISION

67. The Commission approves Application No. 1550523 for the enlargement of the City of Red Deer's electric distribution system service area to include land recently annexed by the City of Red Deer from Red Deer County.

68. The approval of Application No. 1550523 will not take effect until:

- the City of Red Deer is prepared to serve the Annexed Customers;
- the asset transfer is set to take place; and
- the parties have reached an agreement with respect to the payment of compensation and the agreement has been approved by the Commission or absent such agreement, the Commission has issued its order for the payment of compensation pursuant to subsections 29(4) and (5) of the HEEA.

Dated in Calgary, Alberta on May 15, 2009.

ALBERTA UTILITIES COMMISSION

(original signed by)

Thomas McGee
Panel Chair

(original signed by)

Tudor Beattie, Q.C.
Commissioner

(original signed by)

Anne Michaud
Acting Commissioner

APPENDIX 1 – PROCEEDING PARTICIPANTS

Name of Organization Counsel or Representative
ATCO Electric Ltd. Loyola Keough
The City of Red Deer Ligong Gan
David Richter
ENMAX Power Corporation Grant Weismiller
FortisAlberta Inc. Terence Dalglish

Alberta Utilities Commission
Commission Panel Thomas McGee, Panel Chair Tudor Beattie, Commissioner Anne Michaud, Acting Commissioner
Commission Staff Catherine Wall (Commission Counsel) Shannon Ramdin (Commission Counsel) Danielle Glover Shawn Allen

APPENDIX 2 – ABBREVIATIONS

Abbreviation	Name in Full
AUC	Alberta Utilities Commission
EUB	Alberta Energy and Utilities Board
FAI	FortisAlberta Inc.
HEEA	Hydro and Electric Energy Act
MGA	Municipal Government Act
RCN-D	Replacement-Cost-New-Less-Depreciation
RD	The City of Red Deer
SIP	Statement of Intent to Participate

APPENDIX 3 – MAP OF PROPOSED SERVICE AREA ENLARGEMENT

